IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9069 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MEENABEN W/O. RAMANJI DANAJI THAKOR

Versus

COMMISSIONER OF POLICE AHMEDABAD

Appearance:

1. Special Civil Application No. 9069 of 2003

MS BANNA S DUTTA for Petitioner No. 1

MS MITA PANCHAL ld. AGP for Respondent No. 1-3

SERVED BY RPAD - (N) for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 15/10/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed

against him by the Police Commissioner, Ahmedabad city on 13.6.2003 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short). The petitioner was declared as 'bootlegger'.

The grounds served upon the petitioner and placed on record reveal that the detaining authority relied upon the fact of registration of six offences against the petitioner on 24.1.2002, 23.12.2002, 5.1.2003, 11.3.2003, 13.5.2003 and 6.6.2003 under sec. 66(1)(B) and 65(A)(E) of the Bombay Prohibition Act, whereby in each case some quantity of country liquor is alleged to have been found from the possession of the petitioner. The detaining authority further relied upon two in-camera statements as recorded by the sponsoring authority on 9.6.2003 and verified by the detaining authority on 11.6.2003 revealing the incidents occurred on 26.5.2003 and 19.5.2003. From the above material, the detaining authority passed the above said order of detention.

Ld. advocate M. Banna Datta for the petitioner and ld. AGP Ms. Panchal for the respondents were heard at length. The affidavit in reply filed by the detaining authority as placed on record, is also taken into consideration.

Out of various grounds raised on behalf of the petitioner and controverted by ld. AGP, from the rival contentions, it appears that this matter can be considered and decided on sole ground whether the subjective satisfaction of the detaining authority is vitiated on non-application of mind in respect of the objectional activities of the petitioner were prejudicial to the maintenance of public order. In this respect, the detaining authority relied upon two aspects as aforesaid. Firstly, upon registration of crimes under the Bombay Prohibition Act mere facts of registration of crimes under the Bombay Prohibition Act against the petitioner whereby some quantities of country liquor found from the possession of the petitioner would not ipso facto lead to the satisfaction that the activities were prejudicial to the maintenance of public order especially when the cases were pending for investigation, and secondly, the detaining authority relied upon the two in-camera statements as aforesaid. Now, while going through those statements, it appears that in an incident occurred on 26.5.2003 witness narrated that when he was standing near Dakorvas, the petitioner along with her associates approached the witness. The petitioner asked the witness to keep bulk of liquor which was to come from somewhere

in the house of the witness. She also stated that since the police was watching her it was necessary that the bulk of liquor be kept in the house of the witness. When the witness refused to do that, her associates started beating the witnesses though the crowd gathered around by them were threatened by the associates of the petitioner and the crowd were disbursed. Due to this, traffic was disrupted and fear and terror was created by the petitioner and her associates. While incident occurred on 19.5.2003 witness narrated that while witness was passing near Delhi Darwaja, petitioner and her two other companions approached him and threatened that the witness was watching the activities of the petitioner and was informing the police. The witness refused that he was not informing anything to police. On this refusal, the companions of the petitioner started beating the witness. Though the persons passing nearby gathered around, but they were threatened by the petitioner and her associates and, therefore, they ran away. The petitioner and her associates created terror and fear in the locality and traffic was also disrupted.

The question therefore, is whether from the contents of the statements recorded by the police could it be said that the public order was disturbed. The same activity of a person might be affecting only law and order and might be affecting the maintenance of public order as well. Therefore, it is that degree and extent of the reach of the objectional activity upon the society which is vital for considering the question whether a man has committed only a breach of law and order or has acted in a manner likely to cause disturbance to public order. It is the potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of public order. In each case, on the facts, the courts have to judge the length, magnitude and intensity of the questionable activities of the persons to find out whether his activities are prejudicial to maintenance of public order or only law and order. Adverting to the facts of this case, while registration of crimes against the petitioner could not be said to be disturbing the public order, the statements revealing the incidents also appears to be individual disputes picked up by the petitioner and not involving society at large. It is difficult to say that the detaining authority was justified in arriving at the satisfaction that the activities of the petitioner-detenu were likely to adversely affects the maintenance of public order from the incidents narrated by the witnesses through in-camera statements. The activities either taken singly or cumulatively at the most may be taken

care of by the ordinary law and may be disturbing or affecting the law and order but it cannot be said that these objectional activities were affecting the maintenance of public order. Therefore, the order in question is required to be quashed and set aside on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 13.6.2003 by the Police Commissioner, Ahmedabad city under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if she is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. VORA, J.)

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